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62574	7550	03/27/2008	EXAMINER	
Jason H. Vick Sheridan Ross, PC Suite # 1200 1560 Broadway Denver, CO 80202			SKOWRONEK, KARL HEINZ R	
			ART UNIT	PAPER NUMBER
			1631	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,749

Applicant(s)

KOUCHI ET AL.

Examiner

KARLHEINZ R. SKOWRONEK

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Status

Claims 1-3 and 5-21 are pending.

Claim 4 is cancelled.

Claims 1-3 and 5-21 are being examined.

Specification

Response to Arguments

Applicant's argument, see Remarks p.9, filed 28 December 2007, with respect to the objection to the specification for including trademarks has been fully considered and are persuasive. The objection to the specification has been withdrawn.

Claim Rejections - 35 USC § 112

Response to Arguments

Applicant's amendment of claim 7 has overcome the rejections under 35 USC 112 2nd paragraph, see claims p. 4, filed 28 December 2007. The rejection of claim 7 has been withdrawn.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The following rejection is reiterated from the previous office action.

Art Unit: 1631

Claim 16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 16 is drawn to a biological information trend displayed object on a display device. The object of claim 16 does not fall into the statutory classes of invention because a displayed object is non-functional descriptive material.

Response to Arguments

Applicant's amendments do not overcome the rejection of claim 16 under 35 USC 101. The MPEP guides:

"When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See >Diamond v. <Diehr, 450 U.S. *>175,< 185-86, 209 USPQ *>1,< 8(noting that the claims for an algorithm in Benson were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer."). Such a result would exalt form over substance." MPEP 2106.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Response to Arguments

Applicant's arguments, see remarks p. 9, filed 28 December 2007, with respect to the rejection of claims 1-3, 10-11, 14-15, and 17-21 as anticipated by

Nelwan et al. have been fully considered and are persuasive. The rejection of claims 1-3, 10-11, 14-15, and 17-21 has been withdrawn on the basis of the amendments made to the claims.

Claim 1, 3, 6, 10, and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ascher et al. (US PAT 4,809,705).

The claims are drawn to a device having means for obtaining information, making a determination of abnormal information, and displaying information. In some embodiments, the display is modified with a visual alarm and thereby altering the display style. In some embodiments, the biological information is displayed in association with the source of biological information. In some embodiments, the device makes a determination of if the information exceeds or falls below a threshold.

Ascher et al. shows a device for obtaining biological information that is specifically an electrocardiogram. The device is microprocessor controlled (col. 1, line 65). Ascher et al. shows that the device comprises a display means (col. 1, line 63). Ascher et al. shows the display means displays a time-series by showing an electrocardiogram (col. 3, line 15-23). The electrocardiogram is a time-series trend. Ascher et al. shows the device also comprises a determining means (col. 3, line 4-11). Ascher et al. show that the determining means as a means for determining abnormal data as exemplified by determining if heart beat rate crosses predetermined upper and lower thresholds and sounding an alarm (col. 3, line 25-28). Ascher et al. shows the display is modified with a visual alarm

and thereby altering the display style (col. 3, line 24-28). Ascher et al. shows the device has a means for obtaining biological information through leads that are attached to a patient (col. 2, line 25-47). Ascher et al. shows an embodiment in which the biological information is displayed in association with the source of biological information (figure 3 and col. 3, line 19-23). Ascher et al. shows in an embodiment that the device makes a determination of if the information exceeds or falls below a threshold (col. 3, line 26-28).

Response to Arguments

Applicant's arguments filed 28 December 2007 have been fully considered but they are not persuasive. Applicant argues that Ascher et al. fails to show a time series trend. The argument is not persuasive because Ascher shows a display device in figure 3 and as described in col. 3, line 15-23 of an electrocardiogram. The electrocardiogram is a time-series trend.

Applicant also argues that Ascher et al. does not show changing the trend display style upon determination of abnormal information. This argument is not persuasive because Ascher et al. shows that a visual alarm is tripped when a threshold limit is crossed reading on the change in display style.

Claims 1, 3, 5, 7, 8, 10-13, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dia medical system Kabushiki Kaisha "JP787" (Japanese patent JP 51-787, cited on IDS 1/9/06).

The claims are drawn to a device having means for obtaining information, making a determination of abnormal information, and displaying information. In

Art Unit: 1631

some embodiments, the determination of an abnormal event causes the display to present the information. In some embodiments, the trend style change corresponds to a change in color of the trend information. In some embodiments, the color-coded source undergoes a color change when the source exceeds or drops below a threshold. In some embodiments, the display means allows to discriminate between cases where current information is abnormal; past and current information are abnormal and past information is abnormal but current information is not abnormal.

JP787 shows a trend display device for biological information. JP787 shows the device has an information obtaining means, a abnormal information determination means, and a display means (p. 1). JP787 shows that the display mean displays information determined to be abnormal and identifies its source (p. 6, para 2). JP787 shows the determination of an abnormal event causes the display to present the information (p. 6, para 2). JP787 shows the trend style change corresponds to a change in color of the trend information (p. 5-6). JP787 shows that each source of information is coded by color (p. 5). JP787 shows the color coded source undergoes a color change when the source exceeds or drops below a threshold (p. 5 and exemplified on p. 6). JP787 shows that the display means allows to discriminate between cases where current information is abnormal; past and current information are abnormal and past information is abnormal but current information is not abnormal (p.7-8).

Response to Arguments

Applicant's arguments filed 28 December 2007 have been fully considered but they are not persuasive.

Applicant argues that JP787 does not show that the determined abnormal information is displayed in association with the source of information. Contrary to applicant's assertion, JP787 shows at p. 6, line 24-26 that the determined abnormal information is displayed in association with the source of information.

Applicant also argues that JP787 does not show an embodiment in which the source of normal data is not shown. This is not persuasive because JP787 shows in on p. 6, paragraph 2 that only when abnormal data is determined is the source displayed.

With regards to applicant's argument that JP787 does not show the limitations of claim 6. Claim 6 was not rejected over JP787.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 1631

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following rejection is necessitated by amendment

Claims 1-3, 5, 7, 8, 10-15, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelwan et al., in view of Dia medical system Kabushiki Kaisha "JP787".

The claims are drawn to a device having means for obtaining information, making a determination of abnormal information, and displaying information. In some embodiments, the device is encoded on a computer readable medium. In some embodiments, multiple information sources can be displayed. In some embodiments, multiple information is in the same style. In some embodiments, information shows different behaviors. In some embodiments, display means

presents information related to ST level trends and source related lead information.

Nelwan et al. shows a trend display system and device for obtaining biological information determining and displaying information related to cardiac function. The device comprises a storage review unit having a display means, a means for determining abnormal data, and means for obtaining biological information (p1355, col. 2, para. 2). Nelwan et al. shows an abnormal information determining means to provide clinical alarms upon abnormal information as a result from, for example, measurement lead failure (p. 1355, col. 2, para 3). Nelwan et al. shows a computer readable medium (p. 1355, col. 1, para 3). Nelwan et al. shows that the multiple information sources can be displayed (p. 1356, col. 1, para 6). Nelwan et al. shows that by marking time points that a change in the display style is affected (p. 1356, col. 1, para. 5). Nelwan et al. shows that multiple information is in the same style (p. 1356, col. 1, para 6). Nelwan et al. shows that information shows different behaviors (p. 1356, col. 1, para 6). Nelwan et al. shows display means presents information related to ST level trends and source related lead information (p. 1355, col. 2, para. 3 and p. 1356, col. 2, para. 2-3).

Nelwan et al. does not show biological information determined to be abnormal is displayed in association with the source.

JP787 shows a trend display device for biological information. JP787 shows the device has an information obtaining means, a abnormal information determination means, and a display means (p. 1). JP787 shows that the display

Art Unit: 1631

mean displays information determined to be abnormal and identifies its source (p. 6, para 2). JP787 shows the determination of an abnormal event causes the display to present the information (p. 6, para 2). JP787 shows the trend style change corresponds to a change in color of the trend information (p. 5-6). JP787 shows that each source of information is coded by color (p. 5). JP787 shows the color coded source undergoes a color change when the source exceeds or drops below a threshold (p. 5 and exemplified on p. 6). JP787 shows that the display means allows to discriminate between cases where current information is abnormal; past and current information are abnormal and past information is abnormal but current information is not abnormal (p.7-8). JP787 shows that changing the display style to indicate the source of the abnormal information has the advantages of focusing attention on the abnormal data and leads to the administration of immediate, proper treatment (p. 3 and p. 8).

It would have been obvious to one of ordinary skill to modify the ST monitoring system of Nelwan et al. with the trend display device that displays the source of abnormal biological information of JP787 because JP787 shows that indicating the source of the abnormal information has the advantages of focusing attention on the abnormal data and leads to the administration of immediate, proper treatment.

The following rejection is reiterated from the previous action.

Claims 1, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dia medical system Kabushiki Kaisha "JP787" (Japanese

Art Unit: 1631

patent JP 51-787, cited on IDS) as applied to claims 1, 3-5, 7, 8, 10-12, and 17-20 above, in view of van Weele et al. (US PAT 5,631,825).

Claim 9 is directed to the design of visual alerts areas distinct from the trend lines displayed by the display means.

JP787 shows the information is highlighted by color change to alert a user to an abnormal condition as described above.

JP787 does not teach display areas with inner and outer indication areas.

van Weele et al. shows the uses of color-coded icons to indicate monitored events (col. 1, line 55-61). van Weele et al. shows that the advantage of color coding and icon usage is more effective supervision of processes (col. 1, line 65-67).

It would have been obvious to modify the trend display device of JP787 with the use of color-coded icons of van Weele et al. because van Weele et al. shows that the advantage of color coding and icon usage is more effective supervision of processes. The display areas of claim 9 are viewed as obvious to the color-coded icons of van Weele et al. and represent an aesthetic design change. In re Seid , 161 F.2d 229, 73 USPQ 431 (CCPA 1947) (Claim was directed to an advertising display device comprising a bottle and a hollow member in the shape of a human figure from the waist up which was adapted to fit over and cover the neck of the bottle, wherein the hollow member and the bottle together give the impression of a human body. Appellant argued that certain limitations in the upper part of the body, including the arrangement of the arms, were not taught by the prior art. The court found that matters relating to

Art Unit: 1631

ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art.).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KARLHEINZ R. SKOWRONEK** whose telephone number is (571)272-9047. The examiner can normally be reached on Mon-Fri 8:00am-5:00pm (EST).

Art Unit: 1631

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marjorie A. Moran can be reached on (571) 272-0720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

27 March 2008

/K. R. S./

Examiner, Art Unit 1631

/John S. Brusca/

Primary Examiner, Art Unit 1631